

270 CMR 4.00: GROUNDS FOR DISCIPLINE, COMPLAINTS, DISCIPLINARY ACTIONS,
SUMMARY LICENSE SUSPENSION, AND LICENSE REINSTATEMENT

Section

- 4.01: Grounds for Discipline
- 4.02: Investigation and Action on Complaints
- 4.03: Disciplinary Actions, Criminal Penalties, and Civil Administrative Penalties
- 4.04: License Suspension Pending Hearing (Summary License Suspension)
- 4.05: License Reinstatement

4.01: Grounds for Discipline

The Board may discipline the license of a genetic counselor licensed by the Board on one or more of the grounds for discipline listed in M.G.L. c. 112, §§ 61 and 233, or on one or more of the following grounds, or both. Nothing in 270 CMR 4.01 shall limit the Board's adoption of policies and grounds for discipline through adjudication as well as through rule-making. The term "license" as used in 270 CMR 4.00 shall mean both a provisional license and a full license issued by the Board, and any right to an extension of a provisional license pursuant to 270 CMR 3.04(3) or right to renew a full license.

- (1) Violating any state or federal law, rule, or regulation governing, or related to, practice as a licensed genetic counselor;
- (2) violating any rule, regulation, or written policy formally adopted by the Board;
- (3) engaging in any conduct that demonstrates a lack of good moral character;
- (4) engaging in practice outside the authorized scope of practice for genetic counselors as defined in M.G.L. c. 112, § 227;
- (5) engaging in any conduct that has the capacity to deceive or defraud;
- (6) engaging in fraud, deceit, or misrepresentation;
- (7) authorizing, or aiding and abetting, any unlawful activity;
- (8) practicing as a licensed genetic counselor without the requisite professional competency;
- (9) practicing as a licensed genetic counselor while the ability to do so with reasonable judgment, skill, and safety is affected by illness, use of alcohol, drugs, chemicals, or any other type of substance, or as a result of any mental or physical condition, or by any combination of the foregoing;
- (10) engaging in the abuse or illegal use of prescription drugs or controlled substances, alcohol, or any combination of the foregoing;
- (11) conviction of any crime whether by a verdict or finding of guilty, entering a plea of guilty, entering a plea of *nolo contendere* (no contest), or by entering any other plea treated by a court as a guilty plea regardless of the jurisdiction in which the conviction was entered, or admitting to sufficient facts to warrant a finding of guilty of any crime;
- (12) denial of a license or other authorization to practice any trade, occupation, or profession, or any disciplinary action against a license or other authorization to practice any trade, occupation, or profession, by another governmental authority in Massachusetts for reasons substantially the same as those set forth in M.G.L. c. 112, §§ 61 and 233, 270 CMR 4.01, or as adopted by the Board through adjudication;
- (13) denial of a license or other authorization to practice any trade, occupation, or profession, or any disciplinary action against a license or other authorization to practice any trade, occupation, or profession, by any governmental authority in another state or jurisdiction for reasons substantially the same as those set forth in M.G.L. c. 112, §§ 61 and 233, and 270 CMR 4.01;

4.01: continued

- (14) denial of certification or recertification as a genetic counselor, or any adverse action against such certification, by a genetic counselor certifying agency;
- (15) failing to report in writing to the Board within 30 days any action set forth in 270 CMR 4.01(11), (12), (13), and (14);
- (16) practicing as a licensed genetic counselor, or representing oneself in any way as a licensed genetic counselor, after license expiration, license suspension, license surrender, or license revocation, or loss of certification as a genetic counselor;
- (17) violating the laws governing the practice of genetic counseling of another state or jurisdiction as a result of the use of telecommunications technology or another future technology;
- (18) withholding or denying genetic counseling services based on age, ancestry, marital status, sex, sexual orientation, race, color, religious creed, national origin, diagnosis, mental or physical disability, or genetic information;
- (19) failing to comply with accepted research standards, ethics, principles, or procedures, or with governmental statutes, regulations, or policies regarding research;
- (20) exercising undue influence with respect to a client, including the promotion or sale of services, goods, appliances, or drugs in such a manner as to exploit a client for the financial gain of the genetic counselor or a third party;
- (21) engaging in false, deceptive, or misleading advertising related to practice as a genetic counselor;
- (22) failing to establish and observe professional boundaries with respect to any client with whom a licensed genetic counselor has, or has had, a genetic counselor/client relationship;
- (23) initiating or maintaining a genetic counselor/client relationship that is likely to adversely affect the genetic counselor's professional judgment;
- (24) failing to inform the Board in writing within 30 days of any change of name, address, or Social Security number;
- (25) in connection with any examination related to the practice of genetic counseling:
 - (a) impersonating or acting as proxy for an applicant for genetic counselor certification or licensure;
 - (b) disclosing the contents of any examination, or soliciting, accepting, or compiling information regarding the contents of any such examination before, during, or after its administration, or in any other way compromising or attempting to compromise the integrity of any such examination; or
 - (c) in any other way cheating on any such examination;
- (26) practicing as a licensed genetic counselor under a different name than the name appearing on a license issued by the Board at the time of such issuance;
- (27) knowingly falsifying, or attempting to falsify, any documentation or information related to any aspect of certification or licensure as a genetic counselor, practice as a licensed genetic counselor, or the delivery of genetic counseling services as a licensed genetic counselor;
- (28) billing for services not rendered or submitting false claims for reimbursement;
- (29) violating any final decision and order, or any other order, duly issued by the Board;
- (30) failing to comply with the terms of a consent agreement entered into with the Board in resolution of a complaint;

4.01: continued

- (31) altering or inappropriately destroying any record related to practice as a licensed genetic counselor or in a manner that is inconsistent with accepted standards of genetic counseling practice;
- (32) failing to cooperate with any request by the Board to appear before it or to provide requested information, or both;
- (33) failing to respond to a Board subpoena and to furnish the Board, its investigators or representatives with records, documents, information or testimony to which the Board is legally entitled;
- (34) failing to comply with recognized ethical standards of the profession including, but not limited to, the Code of Ethics of the National Society of Genetic Counselors (NSGC) as adopted by the NSGC in January 1992 and revised December 2004 and January 2006;
- (35) violating any federal or state law or regulation promulgated thereunder governing the privacy and confidentiality of information obtained in practice as a licensed genetic counselor;
- (36) failing to practice in accordance with accepted standards of genetic counseling practice;
- (37) engaging in any conduct that undermines public confidence in the integrity of the genetic counseling profession;
- (38) engaging in any conduct that has the capacity or potential to place the public health, safety, and welfare at risk.

4.02: Investigation and Action on Complaints

- (1) The Board shall review all communications that allege that a genetic counselor who holds a license issued by the Board, whether such license is current or expired, has violated any law or regulation related to practice as a licensed genetic counselor. If the Board determines after preliminary investigation that any allegation of misconduct merits further consideration or action, the Board shall establish a complaint against the license.
- (2) If the Board establishes a complaint against a license, it may dismiss the complaint where it determines that:
 - (a) the nature of the complaint is within the jurisdiction and expertise of another governmental agency or entity;
 - (b) there is insufficient evidence to support the complaint; or
 - (c) the conduct complained of does not warrant disciplinary action by the Board.

4.03: License Discipline, Criminal Penalties, and Civil Administrative Penalties

- (1) The actions set forth in 270 CMR 4.03 constitute disciplinary actions the Board may take against a Board-issued genetic counselor license and against any right to extend a provisional license pursuant to 270 CMR 3.04(3) or right to renew a full license. The Board may discipline a license by written agreement between the licensee and the Board or by Board order following an adjudicatory proceeding conducted pursuant to the Massachusetts Administrative Procedure Act, M.G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The Board may also discipline a license pursuant to 270 CMR 4.04, License Suspension Pending Hearing. A disciplinary action against a license is permanent, constitutes a public record, and is reportable by the Board to other governmental licensing agencies and non-governmental certifying agencies, and to national disciplinary data reporting systems.
 - (a) Reprimand. A reprimand against a genetic counselor license is a written statement describing the manner in which a licensed genetic counselor has violated any law or regulation, or both, related to practice as a licensed genetic counselor.
 - (b) License Probation. Probation of a genetic counselor license consists of a period of time during which a licensed genetic counselor may continue to practice as a genetic counselor under terms and conditions specified by the Board.

4.03: continued

- (c) License Suspension. Suspension of a genetic counselor license is the temporary denial by the Board of the right to practice as a licensed genetic counselor and to in any way represent oneself by title or other designation as a licensed genetic counselor.
- (d) Stayed License Suspension. The Board may impose a period of suspension against a genetic counselor license, which suspension the Board does not activate pending compliance with terms and conditions specified by the Board.
- (e) Voluntary License Surrender. Voluntary surrender of a genetic counselor license is the voluntary relinquishment to the Board of the right to practice as a licensed genetic counselor and to in any way represent oneself by title or other designation as a licensed genetic counselor.
- (f) License Revocation. Revocation of a license to practice as a genetic counselor by the Board terminates the right to practice as a licensed genetic counselor and to in any way represent oneself by title or other designation as a licensed genetic counselor.
- (g) Other License Discipline. The Board may impose such other reasonable license discipline as it deems appropriate by written agreement between the licensee and the Board or by Board order following an adjudicatory proceeding conducted pursuant to the Massachusetts Administrative Procedure Act, M.G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.*

(2) In addition to the disciplinary actions set forth in 270 CMR 4.03(1), pursuant to M.G.L. c. 112, § 65, the Board may:

- (a) seek the imposition of criminal penalties of a fine or imprisonment as established by M.G.L. c. 112, § 65, or both, against any person who continues to practice as a licensed genetic counselor following license suspension, license surrender, or license revocation, provided the Board has not assessed a civil administrative penalty for the same violation; and
- (b) assess and collect civil administrative penalties as established by M.G.L. c. 112, § 65, against any person who practices as a licensed genetic counselor following license suspension, license surrender, or license revocation, or who knowingly continues to practice as a licensed genetic counselor after the date of license expiration, provided a criminal penalty has not been imposed for the same violation.

4.04: License Suspension Pending Hearing (Summary License Suspension)

If, based upon affidavits or other documentary evidence, the Board determines that a licensee poses an imminent danger to the public, the Board may suspend or refuse to renew a license pending a final hearing on the merits of the allegations regarding the licensee. A hearing limited to the determination of the necessity of the summary action shall be afforded the licensee within seven days of the Board's action.

4.05: License Reinstatement

(1) A person whose genetic counselor license has been suspended or surrendered by formal agreement with the Board, or suspended or revoked by a Board order issued in an adjudicatory proceeding conducted pursuant to the Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 *et seq.*, or suspended or revoked as otherwise provided by law, may seek reinstatement of such license by filing with the Board a completed and signed application for license reinstatement provided by the Board. The license reinstatement applicant shall include with such application documentation satisfactory to the Board that the applicant:

- (a) has complied with any and all terms or conditions imposed as prerequisites to license reinstatement;
- (b) in the case of a full licensee, is certified as a genetic counselor by a certifying agency;
- (c) is qualified and suitable to resume practice as a licensed genetic counselor including, but not limited to, documentation of good moral character;
- (d) in the case of an expired license, has completed and signed an application for renewal of a full license or, in the case of a provisional license that is no longer valid pursuant to 270 CMR 3.04(1)(a) or (c), an application for extension of the validity of such license pursuant to 270 CMR 3.04(3);
- (e) has paid all applicable fees established by the Executive Office for Administration and Finance pursuant to M.G.L. c. 7, § 3B; and

4.05: continued

- (f) has met all other requirements for licensure that may be in effect on the date the Board receives the applicant's application for license reinstatement.
- (2) The Board shall only consider an application for license reinstatement that is accompanied by the documentation identified in 270 CMR 4.05(1)(a) through (f), except as provided by 270 CMR 4.05(3) regarding verification of certification as a genetic counselor by a certifying agency.
- (3) Where obtaining verification of a license reinstatement applicant's certification as a genetic counselor as required by 270 CMR 4.05(1)(b) is solely dependent on license reinstatement by the Board, the Board may issue a letter of intent to the certifying agency stating the Board's intent to reinstate the license following receipt of verification of the applicant's current genetic counselor certification.
- (4) An application for license reinstatement initiated by the Board's receipt of a completed application form and all applicable fees shall be considered valid for one year from the date of its initiation. If the application for license reinstatement is not completed by the applicant and received by the Board within one year from the date of its initiation, such application shall no longer be valid. Any applicant whose application for license reinstatement is no longer valid may submit to the Board a new application for license reinstatement and pay all applicable fees pursuant to 270 CMR 3.07 and 4.05.
- (5) An application for reinstatement of a genetic counselor license once initiated may not be withdrawn.
- (6) Any reinstatement of a genetic counselor license by the Board may be contingent on the applicant's entering into a probation agreement with the Board that may include supervision of genetic counselor practice as set forth in 270 CMR 3.03.
- (7) The Board may reinstate a genetic counselor license if such reinstatement is in the best interest of the public health, safety, and welfare.

REGULATORY AUTHORITY

270 CMR 4.00: M.G.L. 13, §§ 98 and 100; c. 112, §§ 227 through 233; c. 112, §§ 61 and 65; and c. 30A, § 13A.

NON-TEXT PAGE